

26 NOVEMBER 1941

I N D E X

of

WITNESSES

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of

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1 Tuesday, 26 November, 1946

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before with the
14 exception of the HONORABLE R. B. PAL, Member from
15 India, not sitting.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

18 The Accused:

19 All present except OKAWA, Shumei, who is
20 represented by his counsel.

21 - - -

22 (English to Japanese and Japanese
23 to English interpretation was made by the
24 Language Section, IMTFE.)
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RICHARDSON

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Mr. Brannon.

4 - - - -

5 J A M E S O. R I C H A R D S O N, called as a
6 witness on behalf of the prosecution, resumed
7 the stand and testified as follows:

8 CROSS-EXAMINATION

9 BY MR. BRANNON (Continued):

10 Q I believe we concluded yesterday speaking
11 of the 1936 London Naval Treaty.

12 Do you infer from your statement that the
13 withdrawal of Japan was led by NAGANO that it was
14 anything other than acting under his country's
15 instruction that led him to leave the conference?

16 CAPTAIN ROBINSON: If the Court please, the
17 prosecution objects to that question on the ground
18 that it appears to call for the opinion of the
19 witness.

20 THE PRESIDENT: Well, although their action
21 was perfectly legal in a sense, it may be evidence of
22 steps taken in the course of aggression, and what one
23 person does in pursuance of a conspiracy with others
24 is evidence against all of them. Of course, this
25 witness cannot give opinions of that nature, opinions

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1 es to whether NAGANO was instructed or not. If he
2 knew whether NAGANO was instructed or not, he could
3 tell us; but we know very well that the Admiral is
4 not aware of the instructions NAGANO had unless
5 NAGANO told him.
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1 MR. BRANNON: Mr. President, along those
2 lines of questions, I have in mind the fact that
3 this witness has so stated the facts as to give
4 further inferences, and any one of those I seek to
5 discover by the type of question I ask; and it is
6 obvious from the facts as the witness has stated them
7 that the entire report is directed primarily against
8 the accused NAGANO.

9 THE PRESIDENT: Well, it deals with the use
10 of aircraft carriers particularly, and I do not see
11 that it is directed against NAGANO exclusively. It
12 is alleged that the attack was the result of a con-
13 spiracy among the accused, or some of them, and, of
14 course, it is offered as evidence against all those
15 who are alleged to have conspired. Where the Admiral
16 has expressed an opinion you may, if you see fit,
17 direct your cross-examination to show that the nature
18 of the subject matter was such that no expert opinion
19 is called for, and that it is for this Court to decide.
20 In view of your statement yesterday we anticipated
21 that you would attack the Admiral's testimony along
22 those lines.

23 Q In comparing the aircraft carrier strength
24 of the United States and Japan what criterion is
25 ordinarily used?

RICHARDSON

CROSS

1 A The criterion laid down by the treaty was
2 the tonnage, defined as treaty tonnage.

3 Q Then do you state that tonnage is the first
4 factor to consider in such a comparison?

5 A I make no such statement. The statement I
6 made was that the basis in the treaty was the treaty
7 tonnage. I used that basis.

8 Q As a Navy man, do you place total tonnage
9 or total number of ships in first place in regard to
10 a comparison of strength?

11 CAPTAIN ROBINSON: If the Court please --

12 THE PRESIDENT: That last question is clearly
13 admissible.

14 A I did not express any opinions in my state-
15 ment. I gave the facts as disclosed by the records of
16 the Navy Department. The figures there were based on
17 treaty tonnage.

18 Q I do not believe that quite answers my last
19 question, Admiral. Will the reporter read that back?

20 (Whereupon, the last question was
21 read by the official court reporter.)

22 A I would place it, under some conditions,
23 on the number of ships, and, under some conditions,
24 on the size of the ships. It depends upon the pur-
25 poses for which the ships are to be used.

RICHARDSON

CROSS

1 Q Well, let us take the attack on Pearl
2 Harbor as a basis for our discussion. Which do you
3 consider more important, the total tonnage or the
4 total number of aircraft carriers?

5 A In that instance it would be the total num-
6 ber of planes that could be put in the air.

7 Q And the size of the ship or its displace-
8 ment is closely and highly coordinated with the num-
9 ber of aircraft that it can carry, is it not?

10 A It should be. It normally is.

11 Q I refer now to prosecution's previous exhibit
12 No. 916.

13 (Whereupon, a document was handed to
14 the witness.)

15 Q Do you have that in front of you?

16 A I have.

17 THE PRESIDENT: Is that 916 or 918, Mr. Brannon?

18 MR. BRANNON: 916 in this instance, Mr. Presi-
19 dent. This is a list of the major combatant vessels
20 of Japan between 1931 and 1945. I refer to this par-
21 ticular prosecution exhibit because it is the only one
22 that shows the total tonnage of the various Japanese
23 ships as of December 7, 1941.

24 THE PRESIDENT: We brought the wrong exhibit.
25 We were told to bring 918.

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CROSS

1 (Whereupon, a document was handed to
2 the President.)

3 MR. BRANNON: I am sorry. I should have
4 mentioned this to the Clerk so that the Court would
5 have copies.

6 Q In the second column, under "Aircraft
7 Carriers," will you read the figure for total tonnage
8 as of December 7, 1941?

9 A 152,970.

10 Q Will you explain your statement of the total
11 tonnage of 178,070 contained on page 8 in reference
12 to this prosecution exhibit?

13 A When this written statement was prepared I
14 relied upon the best information available in the
15 official records of the Navy Department. Those records
16 showed 178,070 tons. May I complete my reply? After
17 the termination of the treaty Japan built three car-
18 riers: the Hosho, the Soryu, and the Taiyo. The
19 Navy Department did not have accurate information as
20 to the displacement of those ships. After this pre-
21 pared statement was delivered to defense counsel I
22 received court exhibit No. 918 and realized that,
23 undoubtedly, the Japanese having absolute information
24 had better information than was available to the Navy
25 Department. The Navy Department did not have the

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1 information contained in court exhibit 916 until I
2 delivered it in person, but inasmuch as the difference
3 was inconsequential from my point of view I did not
4 deem it worthwhile to correct the statement that had
5 already been given to the defense staff.

6 Q Do you not consider 26,000 tons as important
7 in reference to aircraft carriers?

8 A The gist of my statement was contained in
9 the wording, "Only five years later Japan had more
10 than doubled her carrier strength."

11 Q Well, I am anxious for this Court to have
12 as accurate figures on aircraft carriers as possible.
13 Therefore, may I ask you again if 26,000 tons dif-
14 ference in their strength is not relevant?

15 CAPTAIN ROBINSON: If the Court please, it
16 appears that it is unnecessary to seem to argue with
17 the witness. The statement has been made, the ques-
18 tion has been answered, and further questioning ap-
19 pears to the prosecution to be improper.

20 THE PRESIDENT: The witness must not be
21 asked to repeat any answer.

22 MR. BRANNON: I do not believe he answered
23 my question as to whether 26,000 tons was considered
24 relevant, Mr. President?

25 THE PRESIDENT: Answer, please, Admiral.

RICHARDSON

CROSS

1 THE WITNESS: I have stated that in the in-
2 formation now available to me the correct figure is
3 152,970 tons rather than the statement I gave of
4 178,070 tons. May I complete my statement?

5 MR. BRANNON: You may, sir.

6 THE WITNESS: Since I am asked an opinion,
7 my opinion is that the Court is competent to judge the
8 relevancy.

9 THE PRESIDENT: What do you think, Admiral?
10 You may overestimate our capacity.

11 THE WITNESS: I think it is relevant.

12 BY MR. BRANNON (Continued):

13 Q Going on for the moment to your statement,
14 page 8, paragraph 11, concerning Japanese destroyers,
15 wherein you state the figure in 1931 was 52, 1941 was
16 102.

17 A Later information --

18 Q Pardon me, I am not finished. Will you com-
19 pare that with the prosecution's exhibit before you?

20 A Later information, that is, information secured
21 after this statement was prepared and secured from
22 Japanese sources shows that, with respect to destroyers,
23 instead of being 52 in 1931 and 102 in 1941 it should
24 have been 110 in 1931 and 112 in 1941. With respect to
25 submarines, it shows that --

RICHARDSON

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1 Q Did you want to complete your statement as
2 to submarines? I was going to ask you about that
3 next. It may save time.

4 A With respect to submarines, the figures I gave,
5 based on the best information available to the Navy
6 Department at the time the statement was prepared, were
7 44 in 1931, 74 in 1941. Court exhibit 916 shows that
8 according to Japanese figures there were 67 in 1931
9 and 65 in 1941.

10 Q Do you wish to accept the figures, then, stated
11 in prosecution exhibit before you?

12 A I am quite willing to accept them. The reason
13 I did not accept them when they first came to my atten-
14 tion was the fact that I prepared my statement based
15 on Navy Department records.

16 Q So that we may now modify your paragraph 11
17 to show that there was an increase of two Japanese
18 destroyers over a period of ten years and a decrease
19 of two submarines over the corresponding period; is
20 that correct?

21 CAPTAIN ROBINSON: If the Court please, this
22 witness is here to testify as to what the United
23 States Navy records show. The fact that the Japanese
24 Government has been required to furnish figures which
25 appear to be inconsistent with those which the United
States Navy Department had is merely a tribute to the

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1 secrecy with which Japanese Naval construction was
2 being carried on, and does not indicate comparative
3 reliability of the statistics.

4 THE PRESIDENT: Captain Robinson, you have
5 a right to make objections, but not to get up and
6 make explanations like that. You must leave that to
7 the witness.

8 You may continue, Mr. Brannon.

9 Q In reference to the statement --

10 THE PRESIDENT: Will you repeat the question
11 to the Admiral, please?

12 (Whereupon, the last question was
13 read by the official court reporter.)

14 A I think my statement has already made that
15 correction.
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Greenberg & Barton

1 Q Speaking of the American destroyers decreas-
2 ing 225 to 171, does this take into account the lend-
3 ing or the giving of any American destroyers during
4 the early phases of the European War?

5 THE PRESIDENT: Are you asking how much was
6 postwar construction; I mean how much tonnage was con-
7 structed after the war started? Is that what you want
8 to know?

9 MR. BRANNON: My question was very poorly
10 worded, Mr. President. I will try again.

11 Q Did America give to Great Britan, or lend to
12 Great Britain, fifty destroyers which would account
13 for the decrease in the number of destroyers as stated
14 in your report here?

15 A I did not inquire of the Navy Department how
16 their figures were determined. I accepted them as
17 given to me.

18 Q As a matter of your own personal knowledge
19 do you know whether fifty destroyers were given to
20 Great Britain?

21 A If newspapers can be relied upon, that state-
22 ment is correct.

23 Q By use of the word "dropped" in your report,
24 that is, the number of destroyers dropped from 225 to
25 171, may I inquire as to the cause of that drop in

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number?

1 A I did not inquire as to the cause of the
2 change, but I assume that it was in part due to lend-
3 ing fifty destroyers to Great Britain.

4 Q Will you name the American aircraft carriers
5 possessed by the United States on December 7, 1941?

6 A The Ranger, Yorktown, Wasp, Saratoga,
7 Lexington, Enterprise.

8 Q Was there an aircraft carrier known as the
9 Hornet?

10 A There was an aircraft carrier in the Navy
11 known as the Hornet.

12 Q When was that commissioned in service?

13 A The Hornet was commissioned on 20 October
14 1941, but her air group, that is, her airplanes, were
15 not embarked until 23 December 1941.

16 Q In Navy parlance what do you mean by commis-
17 sioned, Admiral?

18 A By commissioning a ship, the personnel go on
19 board, the commission pennant is hoisted, the flag of
20 the United States is hoisted on board, and the crew
21 start preparing her for service.

22 Q Is the ship fully built at that time?

23 A She is fully built except for some minor
24 installations, but not ready for service.
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1 Q I may have misunderstood you before, Admiral,
2 but will you please tell me what more need be done to
3 make an aircraft carrier seaworthy after it is
4 commissioned?

5 A In any combatant ship a considerable period
6 must elapse between the time a ship is commissioned
7 and the time when she is ready for service, depending
8 upon the urgency of her need. No aircraft carrier is
9 ready for combatant service until her carrier planes
10 are embarked on board and trained, and, as an example
11 of the use of the naval expression that a ship is in
12 the fleet is when she joins the fleet, the Japanese
13 Shoho was commissioned on the 22nd of December, she
14 wasn't included in the list of Japanese carrier tonnage.

15 Q Then would I be correct in stating that the
16 United States had seven aircraft carriers fully com-
17 pleted in so far as construction was concerned?

18 A You would not be correct if you were talking
19 to an informed audience.

20 Q I seek to show this Tribunal, Mr. Witness,
21 that the United States possessed seven aircraft
22 carriers, six of which were on the sea ready for use,
23 the seventh of which was fully completed but not yet
24 put to sea. I, therefore, ask you how long after it
25 was commissioned did it take to put the Hornet to sea?

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1 A I am not informed on that subject, but if you
2 would correct your statement to eliminate "not yet put
3 to sea" and substitute therefore "not ready for service,"
4 your statement would be correct.

5 Q What length of time elapsed between the com-
6 missioning of the Hornet and the time when it was ready
7 for service?

8 A I have no information on that subject.

9 Q What was the name of the Japanese aircraft
10 carrier you referred to a moment ago?

11 A The Shoho.

12 Q That was commissioned after Pearl Harbor,
13 was it not, and certainly would not be ready for
14 service until a greater length of time had elapsed.
15 Is that not so?

16 A I have already so stated.

17 Q I don't believe you stated that in regard to
18 the Japanese ship.

19 THE PRESIDENT: That applies generally, I take
20 it.

21 A If I failed to state it it was because my
22 language is not very clear.

23 Q I have the same trouble, Admiral. I will ask
24 you what your records show to be the plane carrying
25 capacity of each of the American carriers which you

RICHARDSON

CROSS

1 have named.

2 A Ranger, 82; Yorktown, 72; Wasp, 72; Saratoga,
3 90; Lexington, 90; Enterprise, 90.

4 Q What was the capacity of the Hornet?

5 I I have not that information.

6 Q Was it not a 19,900 ton aircraft carrier?

7 A I am informed that that is correct.

8 Q With that displacement, then, can you estimate
9 the number of aircraft it would carry?

10 A As a pure guess I would say 90.

11 Q Do you have the approximate total number of
12 aircraft carried on the American aircraft ships?

13 A At what time?

14 Q As of December 7, 1941.

15 A The figures I have previously given add up
16 to 496.

17 THE PRESIDENT: It may help the Court to know
18 what was the strength of the Japanese fleet in aircraft
19 carriers and planes as of that time. We have it in
20 evidence somewhere. We have the carriers at all events
21 but we may not have the planes. It would be convenient
22 to have it now.

23 MR. BRANNON: I was seeking to make that com-
24 parison next, Mr. President.

25 THE PRESIDENT: Can you tell us, Admiral?

RICHARDSON

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1 THE WITNESS: I haven't the faintest idea.

2 Q Do you have the displacement of the various
3 Japanese aircraft carriers as of December 7, 1941?

4 A I have it.

5 Q Starting with the **Hosho**, will you please give
6 me the displacement tonnage?

7 A According to court exhibit 918, Hosho 7470,
8 Akagi 26,900.

9 Q Might I interrupt, Admiral? As you give the
10 displacement, is it not possible for you to give a
11 fairly accurate estimate of the aircraft carriers --
12 the aircraft it could carry thereby?

13 A Since I am only informed as to Japanese
14 naval practice and took no part in the war, any figure
15 I gave would be a pure guess and might, to my embarrass-
16 ment, be an absurd guess.

17 Q I do not seek to embarrass you in any way
18 but can you give me an answer to this question:
19 Approximately what was the strength of the Japanese
20 aircraft carriers as to plane capacity in comparison
21 with the American aircraft carriers capacity of
22 December 7, 1941?

23 A Such information was not made available to me
24 by the Navy Department and I would be unwilling to
25 hazard a guess.

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1 Q At the bottom of page 9 how can you say, then,
2 that the 360 Japanese planes participating in the Pearl
3 Harbor attack constituted probably 75 per cent of the
4 total Japanese carrier plane strength?

5 A The figure 75 per cent is warranted on the
6 size and number of ships involved, and for some slight
7 mistake, slight variation from 75, is taken care of by
8 the weasel-word "probably."

9 Q I think the Court can infer that probably
10 Japan had a strength of five hundred aircraft.

11 THE PRESIDENT: 480. That is in your favor
12 but still that is on the Admiral's statement. 360 plus
13 120.

14 Q I would like to speak a moment of the cruising
15 capacity of the Japanese aircraft carriers in comparison
16 with the American aircraft carriers. Can you tell me
17 approximately the average cruising distance or range
18 of each?

19 A I cannot give any accurate information but
20 I can make the statement that it has been a funda-
21 mental policy of the Navy of the United States to have
22 ships of the maximum cruising radius of any combatant
23 ships in the world.

24 Q Would it have been possible for the American
25 aircraft carriers then in existence on December 7,

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1 1941, to have left Hawaii, touched the coast of Japan,
2 and returned again without refueling?

3 CAPTAIN ROBINSON: If the Court please, the
4 prosecution understands that with respect to state-
5 ments of opinion that question would be objectionable
6 and, therefore, objects.

7 THE PRESIDENT: I thought it clearly allowable,
8 but read it again, Mr. Court Reporter. I may have
9 misunderstood it.

10 (Whereupon, the last question was read by
11 the official court reporter as above recorded.)

12 CAPTAIN ROBINSON: The further objection, sir,
13 is on the ground it is improper cross-examination. In
14 the statement as prepared and presented in this Court
15 we find nothing to which that question would relate.

16 THE PRESIDENT: I take it the American rule
17 is not confined to affidavits but would extend to
18 sworn statements made in the box. Nevertheless, it
19 appears to me to arise out of that sworn statement.
20 The statement as to the Japanese strength is of no
21 value to us unless we know the American. It is purely
22 a comparative matter. The question -- the matter
23 requires expert knowledge.

24 MR. BRANNON: Would you like that read back?
25

A No. The question as to the cruising radius

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1 of a ship depends upon the speed at which she proceeds.
2 Undoubtedly at economical speeds most, if not all, of
3 the carriers of the United States Navy could have
4 proceeded to the coast of Japan and returned, but
5 even if they couldn't have done so the ability to
6 refuel at sea had been so developed that they could
7 have done it twice without a return.

8 THE PRESIDENT: We will recess for fifteen
9 minutes.

10 (Whereupon, at 1045, a recess was
11 taken until 1100, after which the proceedings
12 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Brannon.

4 BY MR. BRANNON (Continued)

5 Q By prosecution exhibit 809, which is document
6 1628, is it not shown that one of the major problems
7 confronting the Japanese task force that attacked
8 Pearl Harbor was refueling?

9 A That is correct.

10 Q Therefore, could we not accurately conclude
11 that the Japanese aircraft carriers were not built or
12 constructed for such long range cruises?

13 A In my opinion, such an assumption is war-
14 ranted.

15 Q Did you say warranted, sir?

16 A Warranted; justified.

17 Q Then is it not possible to conclude that at
18 the time of the construction of the Japanese aircraft
19 carriers Japanese Naval experts did not have in mind
20 striking either Hawaii or the West Coast of the
21 United States?

22 THE PRESIDENT: Well, I think we must draw
23 that conclusion, or draw a conclusion from matters
24 like that. That doesn't require any expert knowledge.

25 MR. BRANNON: In keeping with the inference

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1 of the witness throughout his testimony that Japan
2 constructed aircraft carriers as part of an ag-
3 gressive policy --

4 THE PRESIDENT: Well, that is a matter for
5 argument, Mr. Brannon. The answer may depend, of
6 course, not merely on the Japanese intentions but
7 also on the limits to their technical ability. At
8 all events, they are matters for us.

9 MR. BRANNON: Of course, I must abide by
10 the ruling, Mr. President, but the defense has long
11 looked forward to the appearance of the naval expert
12 who could express an opinion on such a matter.

13 Q Are you acquainted with the United States
14 First, Second and Third Vinson Plans pertaining to
15 ship building?

16 CAPTAIN ROBINSON: If the Court please,
17 the prosecution objects on the ground that there is
18 nothing in the direct testimony of the witness
19 bearing on that subject. The only basis for the
20 objection -- the substantial basis -- I believe, is
21 time; going into issues that are outside the scope
22 of the witness' direct testimony; therefore, im-
23 proper cross-examination.

24 THE PRESIDENT: Mr. Reporter, will you read
25 that question, please?

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1 (Whereupon, the last question was read
2 by the official court reporter, as follows: "Are
3 you acquainted with the United States First,
4 Second and Third Vinson Plans pertaining to ship
5 building?"

6 THE PRESIDENT: Well, it is very dif-
7 ficult to say what does or does not arise out of a
8 statement as broad as this. The whole point is to
9 show aggression on the part of the Japanese. To gauge
10 that properly we would have to know the strength of
11 the possible opposing fleets in the Pacific and the
12 plans covering them. The Admiral himself describes
13 Pearl Harbor in words to this effect: that "it was
14 the culminating point in Japanese aggression."

15 The American rule that we are applying is
16 one with which I am not completely familiar, although
17 I have to apply it. On this point I shall take the
18 views of my colleagues, because I am not so clear
19 that I feel I can speak on their account without
20 consulting them.

21 (Whereupon, the President conferred
22 with Members on the Bench.)

23 THE PRESIDENT: The majority of the Court
24 thinks the question is allowable.

25 A I am not thoroughly familiar with the

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CROSS

1 various Vinson proposals and plans for the increase
2 of the navy.

3 Q Are you acquainted with the so-called Stark
4 Plan?

5 A I never heard of the plan until this minute,
6 but I would be pleased to give you any information
7 within my knowledge.

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1 Q Under the First, Second and Third Vinson
2 Plans generally was it not the objective to increase
3 the naval strength of the United States?

4 A It was. If my recollection serves me cor-
5 rectly, the First Vinson Plan visualized an increase
6 of ten per cent, the next one possibly an increase
7 of twenty per cent, but the third increase is beyond
8 my knowledge.

9 Q Between the years 1936 to December 7, 1941,
10 would I be correct in stating that the United States
11 embarked on a great shipbuilding program?

12 A Yes.

13 Q Can you tell me the number of aircraft
14 carriers the United States had under construction
15 as of December 7, 1941?

16 A I do not believe that that information was
17 within my records, but I will search the records
18 that I have and give you the best information that
19 is available to me.

20 Q Is it true that under the --

21 A Wait a minute. I was prepared to give you
22 a reply to your previous question.

23 Q Pardon me. I didn't know that you meant at
24 this moment.

25 A According to my records, at the end of 1941

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1 Q Under the First, Second and Third Vinson
2 Plans generally was it not the objective to increase
3 the naval strength of the United States?

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5 rectly, the First Vinson Plan visualized an increase
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7 of twenty per cent, but the third increase is beyond
8 my knowledge.

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10 would I be correct in stating that the United States
11 embarked on a great shipbuilding program?

12 A Yes.

13 Q Can you tell me the number of aircraft
14 carriers the United States had under construction
15 as of December 7, 1941?

16 A I do not believe that that information was
17 within my records, but I will search the records
18 that I have and give you the best information that
19 is available to me.

20 Q Is it true that under the --

21 A Wait a minute. I was prepared to give you
22 a reply to your previous question.

23 Q Pardon me. I didn't know that you meant at
24 this moment.

25 A According to my records, at the end of 1941

RICHARDSON

CROSS

1 the United States had under construction in major
2 combat vessels -- that includes battleships, carriers,
3 cruisers, destroyers and submarines, a total of
4 something over two million tons. At the same time
5 Japan had under construction, according to the best
6 information available to the United States, which
7 might not be accuracy because of the secrecy with
8 which Japan guarded her program -- had under construc-
9 tion less than 500,000 tons of major combat vessels.

10 Q Under the terms of the -- Strike that,
11 please. During the discussions, the Washington
12 Naval Conference 1921 and thereabouts, did not the
13 United States argue that in computing a nation's
14 strength and naval arms you should take under con-
15 sideration the number of ships being then con-
16 structed?

17 A I do not know.

18 Q December 7, 1941, which was more powerful,
19 the Japanese Navy or the American Navy?

20 A In the Pacific Ocean the Japanese Navy was
21 far superior to the American Navy in the Pacific
22 Ocean.

23 Q How much superior?

24 A That would be a pure guess, but if you want
25 a guess I would say somewhere between 10 and 50 per

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CROSS

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22 Ocean.

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25 a guess I would say somewhere between 10 and 50 per

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CROSS

cent.

1 C During 1940, when you were Commander-in-
2 Chief of the United States Fleet, what per cent of
3 the American Fleet was in the Pacific?
4

5 A It would be possible for me to ascertain an
6 accurate figure, but I have no idea as to the
7 accuracy of any statement made now, but it was the
8 vast majority of the combatant fleet of the Navy of
9 the United States which was ready for service.

10 C Admiral, did the United States have an air-
11 craft carrier called the Langley?

12 A The Langley was an old fuel carrier which
13 was converted in the early days to an aircraft
14 carrier. She had no combatant worth at all but she
15 had been of inestimable value to the Navy of the
16 United States because that is where the technique
17 of flight deck operations was developed and where
18 early pilots were trained, but she could not be used
19 in other than purposes of transporting planes.

20 C You subtract it from your list of American
21 aircraft carriers because of the fact then that it
22 was a training ship alone?

23 A No. At the time figures were given, the date
24 for which the figures were given, neither in the
25 Japanese Navy figures or in the United States Navy

RICHARDSON CROSS

1 figures were seaplane tenders included. At that
2 time the Langley was a seaplane tender and not a
3 carrier.

RICHARDSON

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1 Q When was it converted from a seaplane tender?

2 A That information is not within my knowledge.

3 Q Are you acquainted with the Japanese aircraft
4 carrier listed in number one position of prosecution
5 document 916, I believe? I am not certain of that
6 exhibit number.

7 A I have Court exhibit 916.

8 Q Does that show the date the keel was laid?

9 A No; but 918 does.

10 Q Please refer to that. Will you tell me the
11 date the keel was laid on the Hosho?

12 A December 16, 1919.

13 THE PRESIDENT: Why should we have it twice.
14 Are you leading up to another question or just asking
15 him to read the exhibits to us?

16 MR. BRANNON: I seek to show the Langley and
17 the Hosho were comparable ships, Mr. President.

18 THE PRESIDENT: Well, if you know the answer
19 from an exhibit just read it to him and do not ask him.
20 It will save time, Mr. Brannon.

21 Q Do you know whether the Hosho was ever used
22 in combat in this war?

23 A I have no idea.

24 Q If you accepted the assumption for the moment
25 that the Hosho was used only for training purposes, as

RICHARDSON

CROSS

1 was the Langley, would you subtract it from your list
2 of airplane carriers attributed to Japan as of December
3 7, 1941?

4 A I would not. The exhibit 918 is a Japanese
5 document and I know nothing about it. I would not
6 alter it.

7 Q Does the age of that ship, as shown in the
8 prosecution's own document, indicate that it is over age,
9 in terminology of the navy?

10 A Not at the time of Pearl Harbor; but now,
11 certainly.

12 MR. BRANNON: I terminate this at this point,
13 Mr. President, this line, and take it up on our defense.

14 Q Were you a witness before the United States
15 Senate and House Committee on the investigation of the
16 Pearl Harbor Attack?

17 A I was.

18 Q At that time, was there exhibited a series
19 of letters from you, as Commander-in-Chief of the
20 United States Fleet in 1940, to Admiral Stark, Chief
21 of Naval Operations?

22 A There was.

23 Q Have you noted the fact that those records
24 have been published by the Congress and are now being
25 circulated for the public?

RICHARDSON

CROSS

1 THE PRESIDENT: What is the point of that,
2 Mr. Brannon?

3 MR. BRANNON: I seek to lay a foundation for
4 the use of some of this material, Mr. President, as I
5 shall soon refer to it. My purpose in so referring to
6 it is to show by this witness, who in the year 1940 was
7 the Commander-in-Chief of the United States Fleet and
8 was on the Pacific, the American attitude -- the Amer-
9 ican naval attitude -- toward Japan at that time.

10 THE PRESIDENT: Couldn't you tender it later
11 as the report of investigators? The Charter's rules
12 of evidence operate in favor of the defense as well as
13 of the prosecution. It seems a waste of time to cross-
14 examine about that.

15 MR. BRANNON: Mr. President, the witness has
16 accurate personal knowledge as to the condition on
17 the Pacific at that time.

18 THE PRESIDENT: You ask him to add to what
19 he said into the inquiry at Pearl Harbor.

20 MR. BRANNON: I am sorry, I did not hear you,
21 Mr. President.

22 THE PRESIDENT: We do not want to get out
23 of the witness what we are going to hear later when the
24 report is tendered, as it may be. Do you suggest that
25 he said something different to the investigators from

RICHARDSON

CROSS

1 what he said here?

2 MR. BRANNON: Not thus far, Mr. President,
3 but may I elaborate a moment?

4 THE PRESIDENT: Oh, save time if you can.

5 MR. BRANNON: May I state the point that I
6 wanted to make, then the Court may rule. Throughout,
7 the subject of this whole report is the Japanese naval
8 planning and preparation for war.

9 THE MONITOR: Mr. Brannon, by "this report,"
10 do you mean the affidavit or the Pearl Harbor Report.
11 You said, "subject of this report." Does "this report"
12 mean the affidavit or the --

13 MR. BRANNON: The report, the entire report.

14 THE MONITOR: I see. Thank you.

15 MR. BRANNON: Especially does it emphasize
16 the Pearl Harbor Attack plans. Would I not be justified
17 in showing by this witness, who should know better than
18 anyone else at the time, that America had plans in regard
19 to naval preparations against Japan?
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RICHARDSON

CROSS

1 THE PRESIDENT: But if he told the Pearl
2 Harbor Committee and you are going to tender the
3 committee's report, why get them out of him as a matter
4 of form?

5 MR. BRANNON: He knows what the plans are.
6 I don't.

7 THE PRESIDENT: Does the Pearl Harbor report
8 show what they are?

9 MR. BRANNON: In my limited time, Mr. President,
10 that I have spent reading that, I cannot answer your
11 question.

12 THE PRESIDENT: Well, we don't know. We haven't
13 read it.

14 MR. BRANNON: It is the position of defense
15 counsel that this witness, having personal knowledge of
16 such plans, may be able to enlighten the Court as to
17 whether America entertained similar naval preparations
18 against Japan during that period of time.

19 THE PRESIDENT: Quite so. But if he told the
20 Pearl Harbor Committee and they have reported it and
21 you are using the report there is no need for him to
22 go over his evidence again.

23 MR. BRANNON: Would it be of assistance to the
24 Court to have that--

25 THE PRESIDENT: Get on to something else until

RICHARDSON

CROSS

1 you look at the report, Mr. Brannon. Do save time if
2 you can.

3 Q To your knowledge, does the Pearl Harbor Report
4 as printed tell of the American naval preparations
5 against Japan prior to December 7, 1941?

6 A I attended some of the hearings. I was a
7 witness. I have read some of the record. I have not
8 read the book. It is my opinion that the record con-
9 tains references to American naval war plans, but only
10 very slight references.

11 MR. BRANNON: I will check the report and
12 refer back, Mr. President.

13 Q Prosecution document 17, exhibit 1252, con-
14 tains Combined Fleet Top Secret Operations Order No. 1.
15 Does this document contain the orders for the attack
16 on Pearl Harbor?

17 THE PRESIDENT: It is exhibit 1252.

18 A It does not contain the order for the attack.
19 It is the plan for conducting the attack. The plan as
20 put into effect, the execution, was given elsewhere.

21 Q Then, to this day there is no exact duplicate
22 of the Japanese orders to attack Pearl Harbor, is that
23 true?

24 A The plan itself provided for establishing days
25 known as X -- Y Day and X Day.

RICHARDSON

CROSS

1 Q On page 2/17 and 18, under the word "Situation--
2 Situation at Outbreak of War--"

3 A I have it.

4 Q It states "At Outbreak of War." Across from
5 that, "TN" --Translator's Note, I guess -- "This portion
6 cut out." Was that removed from the original document
7 at the time it was recovered?

8 A I do not know. But TN means Translator's Note,
9 and I think it is a fair assumption that the transla-
10 tor found that that portion had been cut out.

11 Q In this portion would you say the plans for
12 the attack on Pearl Harbor originally were contained?

13 A I think in the "Outline of Operations: The
14 Advanced Expeditionary Force will reconnoiter and make
15 a surprise attack on the American Fleet" visualized
16 doing just that.

17 Q But for your information regarding the details
18 of the Japanese attack on Pearl Harbor, you go to
19 another document besides this one, is that true?

20 A That is true.

21 Q And the document on which you rely, or documents,
22 are prosecution's document 1627 and 1628, exhibits 1265
23 -- I don't have the other exhibit number -- oh, and
24 809; is that correct, sir?

25 A I have them now.

RICHARDSON

CROSS

1 Q These two documents are the only evidence you
2 have before this Court today concerning the actual
3 attack on Pearl Harbor itself; is that true?

4 A I have, among my papers, other documents. I
5 think a large part of the information contained in
6 the other documents is derived from information pre-
7 sented in these two documents, 809 and 1265.

8 THE PRESIDENT: Give the exhibit number of
9 that last document named by the Admiral.

10 MR. BRANNON: 809 and 1265.

11 THE PRESIDENT: 1265.

12 MR. BRANNON: I have it listed that way.

13 THE PRESIDENT: Yes. I wanted it to go into
14 the record.

15 We will adjourn now until half past one.

16 (Whereupon, at 1200, a recess was
17 taken.)
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RICHARDSON

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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

- - - -

J A M E S O. R I C H A R D S O N, Admiral, USN
(Ret.), called as a witness on behalf of the
prosecution, resumed the stand and testified as
follows:

CROSS-EXAMINATION

BY MR. BRANNON (Continued):

Q Will the reporter please read back the last
answer?

(Whereupon, the last answer was read
by the official court reporter.)

Q Then exhibit 809, 1265, 1252 composes the
entire information --

A No.

Q (Continuing) -- now on hand concerning the
Pearl Harbor attack; is that true?

A No, I think that those papers do not contain
an accurate statement and a comprehensive statement
of the results of the attack.

Q Other than the matter contained in these

RICHARDSON

CROSS

1 three exhibits, is there any other available infor-
2 mation concerning the Pearl Harbor attack that you
3 know of?

4 (Whereupon, a document was handed
5 to the witness.)

6 A There is none that I know of which I con-
7 sider of importance that has not been presented.

8 Q I refer now to prosecution's document 1265,
9 page 4, upper left-hand corner, starting with the
10 words, "Combined Fleet Secret Operation Order No. 1."
11 I will ask you if this is not solely and only the
12 recollection of one Japanese chief yeoman?

13 A May I ask what page and what part of the
14 page?

15 Q It is document 1265, page 4, the upper left-
16 hand corner, Admiral.

17 A This document here was prepared entirely
18 from the recollection of a Japanese warrant officer,
19 I believe.

20 Q Do you see the words, "The Japanese Empire
21 will declare war on the United States," et cetera?

22 A I do.

23 Q I refer to prosecution exhibit 1252, page 2/7,
24 and ask you to compare the expression there contained
25 with this?

RICHARDSON

CROSS

1 (Whereupon, a document was handed
2 to the witness.)

3 A The statements are quite different.

4 Q The original document, exhibit 1252, con-
5 tains the words, "In case war with the United States,"
6 et cetera, et cetera, rather than the words, "The
7 Japanese Empire will declare war," does it not?

8 A The original document 1252 reads, "Operations
9 of the combined fleet in case war with the United
10 States, Great Britain, and the Netherlands begins
11 during the China operations."

12 Q So that it is quite possible that Order No. 1
13 was an order to be used in the eventuality of war
14 with the United States; is that true?

15 A In my opinion it was an order to be used,
16 however the war was initiated.

17 Q I do not quite follow that answer, Admiral.
18 Will you restate that for me?

19 A Well, it was a plan for the conduct of
20 operations in a war that might be started in any way.

21 Q Is it not and has it not been an established
22 naval procedure of the Powers to have prearranged naval
23 war plans against potential enemies?

24 A Yes, in recent times.

25 Q And in and of itself was it contrary to normal

RICHARDSON

CROSS

1 naval procedure of the Powers that the Japanese had
2 among its navel plans the Pearl Harbor attack?

3 A I think it would be quite normal in the case
4 of Japan, wholly abnormal in the case of the United
5 States, because its success depended upon surprise.

6 Q The initial step of General Order No. 1 was
7 the surprise element, was it not, Admiral? That is --
8 may I reframe it in this way? The General Order No. 1
9 was more than an attack on Pearl Harbor; it was an
10 over-all attack or naval planning throughout the
11 entire Pacific; is that not true?

12 A Quite true.

13 Q I would like at this time to refer to page
14 34 of your affidavit, wherein you quoted Admiral
15 NAGANO.

16 THE PRESIDENT: Exhibit 1249.

17 MR. BRANNON: Paragraph 53.

18 Q At the bottom of that paragraph you refer
19 to page 66, IPS document 1628, which is exhibit 809.
20 On page 66, exhibit 809, I see identical words with
21 those you have written here. They appear on paragraph
22 8. I will ask you if it is not true that these words
23 were spoken by Japanese naval officers and not by
24 Admiral NAGANO, according to your own evidence?
25

 A According to the document itself, the

RICHARDSON

CROSS

1 statement contained in paragraph 6 of the document
2 and quoted in my statement was based on the recol-
3 lections of the Chief of the Operations Section
4 Naval General Staff, Captain TOMIOKA.

5 Q They were not then the words of NAGANO, is
6 that true?

7 A I do not know. They may have been or they
8 may not have been.

9 Q If you will look at paragraph 4 of your
10 document you will see that paragraphs 5, 6, and 7
11 are based on the recollections of Admiral NAGANO.

12 A That is correct.

13 Q Under paragraph 7 or below paragraph 7, it
14 states, as you have read, "The following paragraphs
15 8, 9, 10, 11 and 12 are based upon the recollections
16 of" -- and it names other men. According to your own
17 knowledge I will ask you again if NAGANO made the
18 statement that appears in paragraph 8?

19 A All I can say is that he may or may not have
20 made that statement, but I am unable to produce here
21 sufficient authority to warrant my attributing the
22 direct statement to him.

23 Q I believe I understand your statement.

24 In 1940 was the American fleet moved from
25 the West Coast of America to Hawaii?

RICHARDSON

CROSS

1 A It was.

2 Q What was the reason for that removal?

3 A It was moved to the Hawaiian --

4 CAPTAIN ROBINSON: If the Court please, the
5 prosecution objects to that question as not being
6 within the scope of the direct examination, and,
7 therefore, improper cross-examination.

8 MR. BRANNON: Mr. President, sometime ago
9 I asked one of the witnesses in the courtroom from
10 the State Department a question relating to this
11 same matter. I would like to be allowed to proceed
12 with the same thought in reference to this witness.

13 THE PRESIDENT: Well, now, the British Com-
14 monwealth Section on this Bench are unacquainted with
15 this rule except with one exception. It operates in
16 Canada. In our courts this question would be clearly
17 allowable, and I think our decision this morning
18 covers it. I cannot distinguish between this question
19 and the one we allowed this morning, in substance.

20 The objection is overruled.

21 A The fleet of the United States was moved
22 from the West Coast of the United States to the Hawaiian
23 area in accordance with a long established practice of
24 having fleet exercises annually in the spring of the
25 year.

RICHARDSON

CROSS

1 Q Have you finished?

2 A I might add that the movement of the fleet
3 was planned by my predecessor long before I became
4 Commander-in-Chief.

5 Q Why was it retained at Pearl Harbor?

6 CAPTAIN ROBINSON: The objection is renewed,
7 if the Court please, for the same reasons, and further
8 for the reason that this witness is not testifying
9 from his own knowledge nor as an expert, but is
10 testifying to the contents of a statement that has
11 been prepared and presented to this Court.

12 THE PRESIDENT: Hearsay is admissible here.
13 It is a matter for an expert. The question arises
14 out of the statement, as my colleagues view it.

15 The objection is overruled.

16 A It was retained -- the fleet was retained in
17 Pearl Harbor, as far as I am concerned, by orders from
18 higher authority to remain there.

19 Q Are you personally acquainted with the purpose
20 or reason behind those orders to retain it there?

21 A The only reason I know was one that was
22 given me by the President of the United States.

23 Q Would you give me that reason?

24 A This was given me in October, 1940, several
25 months after the fleet -- many months after the fleet

RICHARDSON

CROSS

1 originally arrived in the Hawaiian area; and he
2 stated that in his opinion it exercised a restraining
3 influence on the action of Japan.

4 MR. BRANNON: That concludes my portion of the
5 cross-examination, Mr. President. I do not think the
6 cross-examination of this witness will be unnecessarily
7 long. Therefore, I would like to request that Japanese
8 counsel for NAGANO be permitted to examine as to some
9 of the facts in this report.

10 THE PRESIDENT: The Japanese counsel could
11 have put his questions through you, Mr. Brannon. You
12 represent NAGANO. We adhere to our rule against two
13 counsel for one accused cross-examining. The applica-
14 tion is refused.

15 Mr. McDermott.

16 MR. McDERMOTT: Mr. President and Members of
17 the Tribunal, I represent the accused, Shigetaro
18 SHIMADA.

19 THE PRESIDENT: A former Admiral.
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RICHARDSON

CROSS

CROSS-EXAMINATION (Continued)

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2 BY MR. McDERMOTT:

3 Q Admiral, in part 3 of your prepared statement,
4 paragraph 33, page 20, you state: "Numerous documents
5 and records show that the Japanese Navy and Government,
6 particularly the Foreign Office, between 1931 and 1941,
7 were engaged in a policy of surveillance, reconnaissance
8 and espionage with respect to the naval establishment
9 and activities of the United States Navy and Govern-
10 ment." I desire to ask you if it is not a fact that
11 these same records disclose that the United States has
12 established a like system of surveillance, reconnais-
13 sance and espionage. Is it not a fact that these same
14 records show that all nations, including Japan and the
15 United States, indulge in the same practice in check-
16 ing and counter-checking the activities of nations,
17 not only regarding the waging of war but in the establish-
18 ment of peaceful practices?

19 A That is true except as to degree.

20 Q What do you mean by degree?

21 A The United States has always made it possible
22 for representatives of foreign nations to see more of
23 what we are doing than Japan has ever permitted any
24 representative of the United States to learn what they
25 were doing.

ROBINSON

CROSS

1 Q Is it not a fact that the Navy records dis-
2 close that the United States through the years 1931
3 and 1941 carried out a careful and well-defined
4 policy of espionage, especially in reference to the
5 activities of the Japanese Navy?

6 A No records disclose that they ever carried
7 out such a plan successfully. It is possible that they
8 might have attempted, but that is beyond my knowledge.

9 Q As you know, Admiral, ever since the signing
10 of the First World War peace treaty there has existed
11 among the nations a serious international situation.
12 Therefore, would it not be natural that the knowledge
13 of the movements -- I withdraw that. Therefore, do
14 the Navy records not disclose that the knowledge and
15 movements and concentration of the United States Fleet
16 in Hawaiian waters would be a matter of political and
17 naval concern to the Japanese bearing on the questions
18 of world peace and war?

19 A Certainly.

20 Q Calling your attention to page 28 of your
21 statement concerning signals, the show of lights, I
22 will ask you if the record shows that that is the
23 accepted practice in modern warfare.

24 CAPTAIN ROBINSON: If the Court please, the
25 prosecution objects on the basis that the question is

RICHARDSON

CROSS

1 directed to a time of war, whereas the date of this
2 communication shows that was presumably during a time
3 of peace.

4 MR. McDERMOTT: Whether it was a time of peace
5 or war, it was used for war.

6 THE PRESIDENT: The Japanese used it here as
7 an act of war. I suppose the Allies also used it in
8 the course of the war. You don't seriously try to
9 separate that from the attack on Pearl Harbor?

10 MR. McDERMOTT: Not in the least, sir.

11 THE PRESIDENT: What relevance has peace-time
12 practice?

13 MR. McDERMOTT: Well, it is connected up
14 with the Pearl Harbor attack.

15 THE PRESIDENT: I don't see what relevance it
16 has. The question is disallowed.

17 Q What is the star boat that is referred to in
18 the fifth paragraph? What do you mean by star boat
19 on the same page?

20 A I don't mean anything by it. I suppose it
21 meant something to the Japanese.

22 Q Well, does that refer to starboard or star
23 boat? Do you know?

24 A In as much as the text of this message shows
25 that this boat was to bear a star at the head of the

RICHARDSON

CROSS

1 sail in any instance, I assume that they called it a
2 star boat because it had a star on its sail.

3 Q You stated in your direct examination that
4 the Navy of the United States was not comparable with
5 the Japanese Navy by from ten to fifty per cent. Do
6 the records --

7 A I think I made no such statement.

8 Q I so understood you, Admiral.

9 A In reply to a question as to the relative
10 strength of the Japanese Navy in the Pacific and the
11 American Navy in the Pacific, I stated that I could,
12 by research, give the exact figures, and when pressed
13 for an answer now I stated that I would hazard a
14 guess that the Japanese was superior somewhere between
15 ten and fifty per cent. I know it was superior to
16 the fleet in the Pacific.

17 Q Do the records of the Navy show why this
18 flash of naval power was made in the face of the
19 strained relations between Japan and the United States?

20 A In so far as I know they do not.

21 MR. LOGAN: No further cross-examination,
22 your Honor.

23 CAPTAIN ROBINSON: A question or two on
24 redirect.
25

ROBINSON

REDIRECT

REDIRECT EXAMINATION

1
2 BY CAPTAIN ROBINSON:

3 Q In answer to a question this morning with
4 regard to comparative tonnages in 1941 in naval con-
5 struction, you answered indicating that the rate of
6 United States naval construction in comparison to the
7 rate of Japanese naval construction was approximately
8 four to one.

9 A I wouldn't characterize it as a rate of con-
10 struction but as a statement as to the number of
11 tonnages of combatant ships under construction at
12 the end of December, 1941.

13 Q Accepting figures to the effect that construc-
14 tion by the United States in December, 1941, exceeded
15 naval construction in Japan, will you state the reasons
16 as shown by the records for that excess?

17 A At the end of 1939 the tonnage of combatant
18 vessels under construction in the United States was
19 approximately 450,000 tons, while that of Japan was
20 something less than 200,000 tons. The amount of
21 tonnage under construction in the United States in-
22 creased rapidly in the year 1939. My belief is that
23 the United States felt that it was confronted with
24 a serious world situation where she must be prepared
25 to defend herself.

RICHARDSON

REDIRECT

1 Q One further question, sir, in regard to the
2 Langley. You were asked about the reason why you did
3 not include the Langley in the list of American air-
4 craft carriers this morning.

5 THE PRESIDENT: He suggested one, if he didn't
6 give the reason. It was a seaplane carrier and they
7 weren't included at that time. It was a tender,
8 really.

9 CAPTAIN ROBINSON: Yes, sir. May I ask the
10 witness whether he has anything further to say on that
11 point? That is all I wish to ask.

12 THE WITNESS: I was asked questions by the
13 defense which indicated an intention to compare the
14 Langley with the Hosho. The Hosho, according to Court
15 exhibit 918, was built as a carrier, keel laid in
16 1919, commissioned as a carrier in 1922. The Langley
17 was built as the USS Jupiter, a collier. It was the
18 first ship in the world to have electric drive, an
19 experimental ship. It was commissioned about 1911.
20 Later she was converted into a carrier. The last time
21 I remember seeing her was in 1936. Her forward flight
22 deck had been removed; a large mast had been installed
23 with a boom capable of hoisting out of the water a
24 seaplane. If my memory serves me correctly, the
25 Japanese Government was informed when the change was

RICHARDSON

REDIRECT

1 made in her classification from carrier to seaplane
2 tender, and when the war started she was in the
3 Philippines as a seaplane tender.

4 CAPTAIN ROBINSON: May it please the Tribunal,
5 I do not propose to question the witness further and
6 I ask leave for the witness to be permitted to leave
7 the Tribunal and return to the United States on the
8 usual conditions?

9 THE PRESIDENT: The Admiral is at liberty to
10 leave on those conditions.

11 (Whereupon, the witness was excused.)

12 CAPTAIN ROBINSON: May I ask, sir, in regard
13 to the return of documents. Certain documents which
14 have been placed with the Court it is desired to
15 withdraw, substituting them with certified duplicates.

16 MR. LOGAN: No objection, your Honor.

17 THE COURT: We order accordingly.

18 Brigadier Nolan.

19 BRIGADIER NOLAN: Mr. President and Members
20 of the Tribunal:

21 In concluding this phase, we now come to cer-
22 tain matters which occurred after the outbreak of the
23 Pacific War. The general ebb and flow of Japanese
24 conquest and the progress of the war itself have been
25 sufficiently shown year by year on the large maps

1 exhibited early in the case. We do not propose to
2 go through the military history, but to present to
3 the Tribunal a selection of political events throwing
4 light on the objects of the war and the conduct of
5 particular accused.

6 First I offer in evidence IPS document
7 No. 1021, the records of the meeting of the Investi-
8 gating Committee of the Privy Council held on 10 December
9 1941 regarding the treaty against a separate peace
10 between Germany, Italy and Japan. The treaty itself
11 is document No. 1204, exhibit No. 51 in the case.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Prosecution's document
14 No. 1021 will receive exhibit No. 1266.

15 (Whereupon, the document above referred
16 to was marked prosecution's exhibit No. 1266 and
17 received in evidence.)
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1 BRIGADIER NOLAN: I read from exhibit 1266, and
2 point out at the committee meeting the following ac-
3 cused attended: the accused TOJO, SHIMADA, TOGO, MUTO
4 and OKA. I will read one passage from the discussion
5 on page 3, marked "A":

6 "Committee Member SUGAHARA asked the opinion
7 of the Government authorities concerning his suggestion
8 that it would be more appropriate for the Government
9 to sign this agreement after Germany and Italy had
10 actually entered the war, because in consideration
11 these two countries might not participate in the war
12 at all, since this draft seemed to have as its premise
13 the participation of both Germany and Italy in the war.
14 To this question Prime Minister TOJO and Foreign Min-
15 ister TOGO answered that it had been arranged that
16 HITLER would announce their participation in the war
17 in the Reichsstadt as soon as he had signed this
18 agreement, and it would be all right to trust the words
19 of the German Government.
20

21 " Committee Member HAYASHI asked the circum-
22 stances of the negotiations with Italy concerning this
23 proposition to which Foreign Minister TOGO replied that
24 in regard to the draft of this agreement negotiations
25 had been carried on mainly at Berlin, but that there
was also complete understanding with Italy."

1 At the end of the document the draft was
2 discussed among the committee and as a result the
3 Committee decided to accept it as it stood. Then
4 the Chairman of the Committee declared the meeting
5 adjourned.

6 I offer in evidence IPS document 1022, being
7 a record of the meeting of the Privy Council held on
8 December 10th, 1941, again concerning the treaty
9 against a separate peace between Germany, Italy and
10 Japan. At this council meeting the following accused
11 attended: TOJO, SHIMADA, TOGO, KAYA and SUZUKI. I
12 will read one passage from the report of the Vice-
13 Chairman marked "A" on pages 3 and 4 of the document.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution document
16 No. 1022 will receive exhibit No. 1267.

17 (Whereupon, the document above
18 referred to was marked prosecution's exhibit
19 No. 1267 and received in evidence.)

20 BRIGADIER NOLAN: I read from exhibit
21 No. 1267:

22 "According to the explanation of the minis-
23 ters concerned, as soon as the difficult situation
24 to conclude the negotiations between Japan and the
25 United States was known, the Imperial Government

1 fathomed the attitude of Germany and Italy and ascer-
2 tained their intention beforehand, considering the oc-
3 casion of emergency when there might be a conflict
4 between Japan and the United States. And then when
5 the situation between Japan and the United States be-
6 came more and more threatening, the Imperial Govern-
7 ment proposed to the German and the Italian Governments
8 a draft of the agreement pertaining to non-separate
9 peace between Japan, Germany and Italy, and opened a
10 negotiation to conclude this agreement. But due to
11 the declaration of war against the United States of
12 America and the United Kingdom on the 8th of this
13 month, the Imperial Government notified the German and
14 the Italian Governments without delay, and proposed at
15 the same time that Japan would expect prompt partici-
16 pation in the war by both powers. Then, as both the
17 governments replied to the proposal that they had no
18 objection to participating in the war and concluding
19 the agreement pertaining to non-separate peace, the
20 Imperial Government repeated the negotiation on the
21 basis of the draft proposed by the German Government,
22 until the negotiation was settled to decide the definite
23 plan.

24 "The outline of the draft of this agreement is
25 as follows:

1 "The draft states in the preamble that the
2 three governments, Japanese, German and Italian, would
3 conclude the agreement with the firm resolution not to
4 lay down arms until the common war against the United
5 States and the United Kingdom would have been achieved
6 completely. Then it provides in the text that the
7 Three Powers, Japan, Germany and Italy, would wage war,
8 forced by the United States of America and the United
9 Kingdom, with all available measures until the war
10 would have been achieved with complete victory, that
11 the Three Powers, Japan, Germany and Italy, without
12 mutual complete understanding, would promise not to
13 suspend hostilities or to make peace with either the
14 United States of America or the United Kingdom, that
15 the Three Powers, Japan, Germany and Italy, would col-
16 laborate with the utmost intimacy after the war termi-
17 nated in victory in order to establish a righteous
18 new order in the significance of the Three-Powers-
19 Pact which was concluded on September 27th in SHOWA
20 15 (1940), and that this agreement would be carried
21 into effect soon after the signature, and be valid for
22 the same period as the Three-Powers-Pact, and the
23 powers concerned would arrive at an understanding con-
24 cerning the forthcoming forms of collaboration at the
25 proper time before the termination of the term of

1 validity."

2 On page 5 the Chairman announced that the
3 Committee had decided unanimously.

4 Next I offer in evidence IPS document
5 1632W (91), an extract from the Kido, 16 December 1941.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution document
8 No. 1632W (91) will receive exhibit No. 1268.

9 (Whereupon, the document above re-
10 ferred to was marked prosecution's document
11 No. 1268 and received in evidence.)

12 BRIGADIER NOLAN: I read exhibit No. 1268:

13 ".... At 2.30 p.m./ Prince KONOYE visited
14 me and expressed his feelings about his own political
15 responsibility and I also expressed my views quite
16 frankly. I asked him to be prudent."

17 THE PRESIDENT: That could refer to anything.

18 BRIGADIER NOLAN: The intention was to show,
19 Mr. President, the surveillance which was being exer-
20 cised even over such an important person as KONOYE.

21 MR. LOGAN: I would move to strike out that
22 gratuitous remark, your Honor.

23 THE PRESIDENT: But it is upon the Brigadier
24 to state upon what grounds it was issued, but it seems
25 to me to have no bearing on anything in issue.

1 BRIGADIER NOLAN: Next I offer in evidence
2 IPS document 1632W (92), being an extract from the
3 KIDO diary, dated the 8th. of December 1941.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution document
6 No. 1632W (92) will receive exhibit No. 1269.

7 (Whereupon, the document above re-
8 ferred to was marked prosecution exhibit
9 No. 1269 and received in evidence.)

10 BRIGADIER NOLAN: I read from exhibit 1269,
11 being an Extract from the Diary of Marquis KIDO,
12 dated 18 December 1941:

13 ".... At 11.30 the Chief of the Navy General
14 Staff proceeded to the Imperial Palace and submitted
15 to the Throne a report on war results at Hawaii.
16 Premier TOJO came to the Palace and saw me. He men-
17 tioned the need for muzzling Prince KONOYE. Talk
18 also of prospects for German-Soviet peace maneuvers."

19 MR. LOGAN: If the Tribunal please, we sub-
20 mitted a correction of this to the translation section
21 and also to Brigadier General Nolan.

22 BRIGADIER NOLAN: I received from counsel for
23 the defense yesterday afternoon what he terms corrections
24 to this document. I, at the request of the Tribunal,
25 have had these excerpts from the KIDO Diary

1 re-translated. As they are now presented we think
2 they are correct. It is, of course, a matter which
3 will have to be decided by the Language Arbitration
4 Board.

5 THE PRESIDENT: Yes. We will recess for
6 fifteen minutes.

7 (Whereupon, at 1445, a recess was
8 taken until 1500, after which the proceedings
9 were resumed as follows.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Brigadier Nolan.

4 BRIGADIER NOLAN: May it please the Tribunal,
5 I now offer in evidence to be marked for identifica-
6 tion IPS document No. 1811, being a collection of
7 essays on problems of international law related to
8 the Greater East Asia war.

9 CLERK OF THE COURT: Prosecution's document
10 No. 1811 will receive exhibit No. 1270 for identifica-
11 tion only.

12 (Whereupon, the document above re-
13 ferred to was marked prosecution's exhibit No.
14 1270 for identification.)

15 BRIGADIER NOLAN: I now offer in evidence
16 IPS document No. 1811, dated the 27th of December,
17 entitled "A Report of Study Concerning Hostilities
18 on the Outbreak of War."

19 MR. LOGAN: If the Tribunal please, the
20 preface to this document which has just been marked
21 for identification shows that the entire book was
22 prepared by the International Law Society, which,
23 I understand, is a society independent of the Govern-
24 ment of Japan, and while I realize that it is ad-
25 missible by virtue of the certificate attached

1 thereto, showing that the document was found in the
2 Foreign Ministry, I also wish to point out that in
3 view of the statements that were made by the prose-
4 cution in the opening of this phase with respect to
5 this document we request that K. HIAYASHI, who made
6 this statement in there that these essays were pre-
7 pared by a committee of well known Japanese inter-
8 national lawyers in cooperation with the Foreign
9 Ministry, made soon after December 8, 1941, be pro-
10 duced by the prosecution for cross-examination on
11 that statement.

12 THE PRESIDENT: The writers of this could be
13 the others, alleged conspirators in the Indictment.
14 All the alleged conspirators are not named in the
15 Indictment.

16 MR. LOGAN: The names of the chairman, if
17 your Honor please, and the members of this special
18 committee appear in the book itself, and I can
19 assure you that there is none of the accused contained
20 in that list.

21 THE PRESIDENT: But they could get these
22 people to write up the law in a way that suited them.
23 I am referring to possible allegations only. We will
24 consider the application to have these people called
25 for cross-examination -- HIAYASHI I should say.

1 MR. LOGAN: I just wanted to point out, your
2 Honor, that the only way we can tie this up would be --
3 at least to disprove it -- would be to call this man
4 to find out just whether anybody from the Foreign
5 Ministry did cooperate with them or not, as alleged
6 in that affidavit.

7 THE PRESIDENT: Did you desire to say anything?
8 I had spoken with the assumption that you hadn't,
9 Brigadier. I hope I didn't prevent you from saying
10 anything.

11 BRIGADIER NOLAN: I had nothing to state.

12 THE PRESIDENT: That is what I thought.

13 We will consider whether HIAYASHI is to be
14 called for cross-examination.

15 BRIGADIER NOLAN: The document has not yet
16 been admitted, Mr. President.

17 THE PRESIDENT: Admitted on the usual
18 terms.

19 CLERK OF THE COURT: Prosecution's document
20 No. 1811, being an excerpt of the foregoing document,
21 is given exhibit No. 1270-A.

22 (Whereupon, the document above re-
23 ferred to was marked prosecution's exhibit
24 No. 1270-A and received in evidence.)

25 BRIGADIER NOLAN: I read from exhibit

1 1270-A, which is entitled "A Report of Study Con-
2 cerning Hostilities on the Outbreak of War:"
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"I

1 "Concerning the time for hostilities to
2 open on the outbreak of war, we have to consult the
3 Third Treaty, decided at the Second Hague Conference
4 which prescribes that hostilities must not be per-
5 formed without a preliminary notice in the form of
6 an ultimatum wherein a declaration, or conditional
7 declaration, of war is included. In respect to our
8 first hostilities in the areas of Hawaii, Hongkong,
9 Singapore, etc., it is to be questioned whether
10 they were commenced in compliance with the above
11 mentioned treaty. Although it appears that Britain
12 says that our first hostilities in the Malay area
13 were opened on the evening of Dec. 7th, we, the re-
14 porters of this study, could not clarify the actual
15 time. There seems to be grounds for entertaining
16 doubt that hostilities were commenced earlier (in
17 practical time) (See IV below) than past 7:30 a.m.
18 when the U. S. Ambassador in Tokyo, being invited
19 to the Foreign Office, received the memorandum stat-
20 ing as regards the negotiation with the U. S. A.
21 'Japan recognizes that the continuance of negotiations
22 henceforth in hope of a settlement is useless' or
23 some time after 8 a.m., when the British Ambassador
24 in Tokyo was invited to the Foreign Office, and in-
25 formed of what the Jap-U.S.A. negotiation had come

1 to; needless to say, earlier than some time after 11
2 a.m. when the Tokyo diplomatic representatives of
3 Britain, the U.S.A., Canada and Australia were handed
4 notifications concerning the outbreak of war in the
5 Hawaiian area. Thereupon, two problems must be con-
6 sidered. The first problem is whether the memorandum
7 concerning the negotiation which was handed to the
8 U.S. Ambassador at some time after 7:30 a.m. on 8th
9 can be regarded as what is called a declaration of
10 war in Hague Treaty No. III. The second problem is
11 whether the Treaty was violated or not, if our hos-
12 tilities in either Hawaii or Malay or Hongkong area
13 were opened earlier in practical time than past 7 or
14 7:30 a.m. when the above-mentioned memorandum was
15 handed to the U.S. Ambassador and the fact was made
16 known to the British Ambassador, assuming that the
17 memorandum could be regarded as a declaration of war;
18 or earlier than some time after 11 a.m. when the
19 diplomatic representatives of Britain, the U.S.A.,
20 Canada and Australia received explicit notifications
21 of the outbreak of war, assuming that the memorandum
22 could not be regarded as a declaration of war.

23 "II.

24 "The first is the question of whether the
25 memorandum concerning the Jan-U.S.A. negotiations,

1 which was handed to the U.S. Ambassador at some time
2 after 7.30 a.m. on the 8th, can be regarded as the
3 'declaration of war' referred to in Hague Treaty No.
4 III. A noteworthy fact in relation to this problem
5 concerns the notification given by our Government
6 at the outbreak of the Russo-Japanese War. In the
7 37th year of Meiji (1904), Minister KURINO in St.
8 Petersburg, having finished negotiations on 6 Feb.,
9 gave notification to the Russian Government, saying
10 that Japan would retain the right to take independent
11 action, and, at the same time, he declared his wish
12 to set out with the staff of the legation. Professor
13 Westlake recognized that this notification should be
14 regarded as a declaration of war. Our recent notifi-
15 cation handed over at some time past 7.30a.m. on the
16 8th, however, can scarcely be regarded as a declara-
17 tion of war, because it included no preliminary no-
18 tice that independent action is being taken or that
19 hostilities are being opened, though it states, 'Ja-
20 pan recognizes that the continuance of negotiations
21 henceforth in hope of a solution is useless.'

22 "III.

23
24 "The second problem is whether the Treaty
25 was violated or not, if our hostilities in either
Hawaii or Malaya or Hongkong area were opened earlier

1 in practical time than some time past 7 or 7.30 a.m.
2 when the above mentioned memorandum was handed to
3 the U.S. Ambassador and the fact was made known to
4 the British Ambassador, assuming that the memorandum
5 could be regarded as a declaration of war; or earlier
6 than some time past 11 a.m. when the diplomatic rep-
7 resentatives of Britain, the U.S.A., Canada and
8 Australia received explicit notification of the out-
9 break of war, assuming that the memorandum could not
10 be regarded as a declaration of war.

11 "Concerning this second problem, if we are
12 to explain that there was no violation of the above
13 mentioned Hague Treaty No. III, we think that the
14 following five points ought to be considered.

15 "(1) To take into consideration not the
16 relation of the practical time but of the nominal time
17 on the day when the war broke out.

18 "(2) To regard as hostilities all or part
19 of the encirclement measures taken by the I.B.C.D.
20 group based on military preparations for economic
21 rupture and preparedness for the outbreak of war."
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1 "(3) (Plainly Speaking) to pick flaws in
2 Hague Treaty No. III itself, say either that the
3 treaty itself has turned out to be only a sort
4 of bluff or simulacrum, being unable to attain its
5 original aim as regards the outbreak of war, or
6 that the prescriptions themselves in the treaty
7 are unreasonable and hypocritical, and can claim
8 no real raison d'etre, considering the nature of
9 wars in present day international relations upon
10 which the fates of nations are staked.

11 "(4) To explain that as it refers to cases
12 when the right of self-defence or of self-preser-
13 vation is exercised, Hague Treaty No. III can be
14 disregarded in this case.

15 "IV.

16 "We wish to begin with a study of the first
17 point, that is, whether we can explain the non-vio-
18 lation of the Third Hague Treaty, by taking into
19 consideration not the relation of practical time
20 but the relation of nominal time on the day when
21 the war broke out. Now speaking from the point
22 of view of so called nominal time, the time is
23 actually the same; but because the places differ
24 the nominal time differs, and they are treated as
25 different hours. For example, supposing that the

1 difference of time between Tokyo and Hawaii is 5
2 hours, that between Tokyo and Singapore 2 hours,
3 the nominal hours are 3 a.m. in Tokyo, 8 a.m. in
4 Hawaii and 1 a.m. at Singapore, while they are all
5 the same in practical time.

6 "Suppose that we declare war at 8 a.m. in
7 Tokyo and what we want to assert, with nominal time
8 as a standard, that we shall not violate Hague Treaty
9 No. III. As we open hostilities after 8 a.m. in
10 both Hawaii and in Singapore, we should recognize
11 that the hostilities may be commenced in Hawaii
12 5 hours before the practical time of delivering
13 the declaration of war, while in Singapore they
14 cannot be opened until 2 hours after the delivery.

15 "Suppose the spot where hostilities will
16 be opened is situated 180 degrees longitude east
17 from Tokyo, where the declaration of war is to be
18 delivered. It is an extraordinary phenomenon for
19 hostilities to commence one-half day before the
20 practical time of making the declaration of war
21 without violating the treaty prescribing notice
22 prior to hostilities. On the contrary, if the
23 spot is situated 180 degrees longitude west of
24 Tokyo, the hostilities cannot be opened before
25 half a day has passed after the practical time

1 of delivering the declaration of war.

2 "A theory that it is not a violation of
3 the treaty to open hostilities either about 5 hours
4 or about half a day in the practical time before
5 the time of delivering the declaration of war, if
6 the hostilities are opened in the spot east of Tokyo
7 where the declaration of war is delivered, cannot
8 be weighty enough to be an interpretation of Hague
9 Treaty No. III, when the aim of the Treaty lies in
10 the prevention of hostilities opened suddenly without
11 preliminary notice. Moreover, it will be impossible
12 in reality to open hostilities either about 2 hours
13 or about half a day in practical time after the
14 delivery of the declaration of war, according to
15 the above example, if the hostilities are to be
16 commenced in a spot west of the place where the
17 declaration of war is delivered. In view of this,
18 it is noteworthy that Britain, in her declaration
19 of war, claims that the Japanese troops tried to
20 land on the coast of Malaya and bombarded Singapore
21 and Hongkong on the evening of December 7th. In
22 brief, it seems to be too hard to justify, if we
23 plead non-violation of Hague Treaty No. III, by
24 taking into consideration nominal time instead of
25 practical time on the day when the war broke out."

"V.

1 "Next, let us study the second point, that
2 is, whether we can explain the non-violation of Hague
3 Treaty No. III by regarding all or part of the military
4 encirclement for economic rupture and preparedness
5 for the outbreak of war taken by the A.B.C.D. group
6 as hostilities. All or part of the measures for
7 military encirclement based on economic rupture
8 and preparedness for the outbreak of war taken by
9 the A.B.C.D. group with the U.S.A. as its centre
10 and including Australia, may be regarded in a some-
11 what vague sense as hostilities, for they were taken
12 with enmity towards Japan. But the word 'hostilities'
13 has various meanings and, even in the Hague Treaties
14 alone, the so-called 'hostilities' in Hague Treaty
15 No. III can be interpreted in a completely different
16 manner from the so-called 'hostilities' in the 10th
17 article of Hague Treaty No. V.
18

19 "In the latter it can be understood to
20 indicate either an act of war in state of war as
21 prescribed in international law or a military and
22 harmful act which should be recognized as bringing
23 about a state of war from the viewpoint of customary
24 international law, but in the former it is understood
25 in a somewhat broader sense as comprehending all

1 harmful military measures, paying no heed to whether
2 or not there is a state of war as prescribed in
3 international law whether or not the state of war
4 is caused by the harmful measures themselves. A
5 more far-reaching conception, though a little vague,
6 allows us to regard economic rupture or large-scale
7 preparedness wherein some incidents of international
8 strife are involved, as hostilities, because they
9 are harmful acts performed with inimical intent.
10 But hostilities in this last sense cannot be said
11 to be the same as the so-called 'hostilities' in
12 Hague Treaty No. III. Supposing that they be the
13 same, by the prescription of the Treaty, the com-
14 mencement of such an act without a previous prelimi-
15 nary notice in the form of an ultimatum which in-
16 cludes a declaration, or conditional declaration,
17 of war will prove to be a violation of Treaty No.
18 III; but such an interpretation is practically
19 absurd. For, it is quite impossible to recognize
20 practically the stage at which the economic measures
21 or military preparedness need preliminary notice in
22 the form of an ultimatum which includes a declaration,
23 or conditional declaration, of war before their /its/
24 commencement."
25

1 Therefore, it is difficult to argue for the non-
2 violation of the Treaty on our part by supposing that
3 Japan appealed to arms after her enemies A.B.C.D. had
4 opened such hostilities as violating Hague Treaty No.
5 III without preliminary notice in the form of an
6 ultimatum which includes a declaration, or conditional
7 declaration, of war, regarding economic rupture or
8 preparedness as the so-called 'hostilities' in Hague
9 Treaty No. III.

10 "VI.

11 "The third point of the above mentioned
12 second problem is, frankly speaking, to find fault
13 with Hague Treaty No. III, which deals with the open-
14 ing of war. We wish to state this in two parts (a)
15 and (b).

16 "(a) Hague Treaty No. III, which concerns
17 the opening of war, prescribes that hostilities can-
18 not be commenced without preliminary notice in the
19 form of an ultimatum which includes a declaration,
20 or conditional declaration, of war. This treaty was
21 concluded for the main purpose of preventing the other
22 country from suffering a sudden, unexpected action,
23 but it could make no prescriptions concerning the time
24 to elapse between the preliminary notice and the first
25 hostilities. Moreover, as it has no clear prescriptions

1 concerning the place where, or the organ through which,
2 the declaration of war is presented to the organ of
3 the other country, one may say that it suffices to pre-
4 sent it to the diplomatic representative of the other
5 country in one's own, regardless of whether or not
6 the government of the other country has notice of it
7 before the commencement of hostilities. Thus, the ori-
8 ginal and principal aim of the Hague Treaty No. III
9 to prevent the other country from suffering a sudden,
10 unexpected offence has proved unattainable, leaving
11 room for such an interpretation as one which says that
12 it is not a violation of the treaty to open hostilities
13 in a far-off land only some 20 or 30 minutes after
14 the delivery of the declaration of war to the dip-
15 lomatic representative of the other country in one's
16 own capital. Hence, it is not implausible to say that
17 the Hague Treaty No. III is nothing but a bluff or
18 simulacrum and that there is no need to respect such
19 a childish treaty at the outbreak of a war in which
20 the fate of a nation is at stake.

21 "(b) While the first hostilities in case
22 of a war whereupon the fate of a nation is at stake will
23 often have a grave influence on the war as the whole,
24 Hague Treaty No. III prohibits opening hostilities
25 unless we give preliminary notice to the other country,

1 thus letting her have time to prepare resistance and
2 counter-attacks. In view of actual international re-
3 lations, this original purport of the Treaty is un-
4 reasonable and quixotic, and, more emphatically
5 speaking, Hague Treaty No. III may be said to be so
6 impossible and hypocritical that it is unable to claim
7 from the first a real raison d'etre in actual inter-
8 national relations. Sudden hostilities must be a
9 formal violation of the Treaty, but it is not im-
10 plausible to explain that it is not so blamable to
11 open hostilities ahead of the other country when the
12 war would break out at any moment, both of the nations
13 being well prepared, looking at it from the view-
14 point of actual international relations.

15 "However, we cannot overlook some great
16 faults in these explanations which find fault with
17 Hague Treaty No. III. In the case of (a), the aim
18 of the Treaty may not be attained, though there be
19 no **formal** violation of the Treaty; but we cannot con-
20 clude from this that we may disregard the Treaty and
21 violate it formally. Since Hague Treaty No. III re-
22 mains in force, it would be difficult to say that hos-
23 tilities carried out without any previous knowledge
24 of the government of the other party are not a vie-
25

1 lation of the said treaty, although hostilities are
2 usually carried out prior to the proclamation of w/r.
3 But the treaty does not call it unlawful to open hos-
4 tilities as soon as the proclamation of war is deliv-
5 ered to the enemy government either directly or through
6 diplomatic channels. If I am allowed to make some
7 comments on paragraph (b), I should like to say that
8 such an action as to fail to conform with Hague Treaty
9 No. III, which is still in force, could not escape
10 being branded as a treaty violation from the point of
11 view of actual international law even though Hague
12 Treaty No. III be unreasonable and hypocritical and
13 even though it may not conform to actual international
14 relations. Even if I were to cite Paragraphs (A) and
15 (B) separately, from the standpoint of international
16 law, they have no power to justify hostilities initi-
17 ated in violation of Hague Treaty No. III. To find
18 fault with Hague Treaty No. III for these reasons and
19 saying that these reasons are in agreement with the
20 following discussion on paragraph IV may give some
21 sense of satisfaction. Especially Paragraph B, with
22 the provisions concerning the rights of self-preser-
23 vation and self-defence, will provide useful suppli-
24 mentary reasons, when one wants to insist that one has
25 a right to ignore the third Article of the treaty,

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1 provided that one's existence is endangered."
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"VII.

"Lastly, I want to study the claim of the right of self-preservation and self-defense, as I think I still cannot clearly indicate the non-violation of the treaty by my above statement with regard to the present war, even though there are various other points to be considered. (Reference: IV or VI Chapter).

"The right of self-preservation was formerly recognized almost unanimously by the scholars of international law as one of the fundamental rights of a nation, but the prevailing theory at present is that a nation has no right of self-preservation, though that of self-defense is recognized. Some jurists use the term the right of self-preservation, but they recognize that it comes within the scope of self-defense (for example Oppenheim). Some other scholars acknowledge the right of self-preservation, but that which they recognize as its import is nothing more than the right of self-defense (for example Hall). However, among the jurists of recent times, such as Rivier, and American Scholars such as George Grafton, Wirsen, Hershev, and Garner, recognize the existence of the right of self-preservation. Or within the scope of international law, in addition to urgent

1 (NOTVEHR) action in regard to self-defense, Kollar,
2 for instance, recognizes an act of urgency (NOTSTAND-
3 HANDLUNG) which is similar to the right of self-pre-
4 servation, based on German penal law. (Checker's
5 note: in this case Jiko hozenken is used instead of
6 Jiko hozenken).

7 "The theoretical basis of recognizing the
8 right of self-preservation jointly with the right of
9 self-defense is to be acknowledged in present inter-
10 national relations. But as the two rights are not
11 clearly considered separately in international con-
12 vention, I shall refer to these points some other
13 day. At present in this place I shall give a short
14 discussion of the theoretical differences between the
15 right of self-preservation and that of self-defense.
16 However, it must be noticed that not only are they
17 scarcely considered separately in international con-
18 vention, but nowadays the thought of absolutely
19 denying the right of self-preservation is prevailing
20 as I mentioned above.

21 "According to the simple theory which recog-
22 nizes the two rights separately, the right of self-
23 preservation in the narrow sense takes precedence
24 over the ordinary rights of other countries, belong-
25 ing to the rights of necessity (DROIT DE NECESSITE)

1 just like the right of self-defense. The exercise
2 of this right is to be recognized only within the
3 limits of necessity in case danger threatens the
4 rights or other legal interests which are championed
5 by this right. In the case of the right of self-de-
6 fense, it shall be exercised in order to protect its
7 own rights and legal interests in case of being at-
8 tacked by other nation. It shall not be employed
9 against the attacking nation until the attack is ac-
10 tually made or the possibility of it impends, while
11 the right of self-preservation in the narrow sense
12 will be active when the existence of a nation (or
13 some important interests which are tantamount to its
14 existence) are in immediate danger. It should be
15 recognized that this right is exercised even against
16 a third power. In the case of the right of self-de-
17 fense, interpreting it according to the tendency to
18 place it in the same category as the right of self-
19 defense in domestic law, it appears that it should
20 be recognized that it can become activated in case of
21 danger threatening rights or interests that are not
22 extremely trifling; without restricting necessarily
23 to cases of danger threatening existence (or important
24 interests of about the same degree).

25 "When one thinks over the situation at the

1 outbreak of the present war (which shall be mentioned
2 in Chapter VIII) it will be clearly understood that
3 interests important for the existence of this country
4 were in imminent danger. Accordingly, if the right
5 of self-preservation in the narrow sense is recognized
6 in international relations we can declare that we are
7 entitled to disregard the provisions of Hague Treaty
8 No. III, in so far as it is necessary to protect
9 the right of self-preservation. From the standpoint
10 of the right of self-defense there is a doubt as to
11 whether we could claim a basis for saying that the
12 situation at the outbreak of war (to be explained in
13 Chapter VIII) implied an attack against our country.
14 Therefore, it might be said that our country was not
15 responsible for the violation of the treaty even if
16 it were a fact that we disregarded Hague Treaty No.
17 III, because the right of self-defense has priority
18 over all treaties. A noteworthy thing in this regard
19 is that Germany justified her aggression against
20 Belgium under the plea of the right of self-defense
21 at the time of the First Great War. Her justification
22 was that the attack was made against Germany by Bel-
23 gium (Kohler) or France (Chanbrun). Comparing the
24 situation before the outbreak of this war, which I
25 shall explain in Chapt. VIII, to the conditions be-

1 fore the invasion of Belgium, it goes without saying
2 that there is more reason to recognize the existence
3 of an attack in the former case.

4 "VIII.

5 "The U.S. authorities, in spite of the
6 fact that the negotiation with our country were under
7 way, were planning not only an economic break with
8 our country, but were also devising a scheme of zealous
9 oppression, hand in hand with England and other
10 satellites, and were furthering the so-called A.B.C.D.
11 plan.

12 "Together with the progress of her enormous
13 naval construction program, the U.S. was proceeding
14 with the gradual strengthening of her naval and air
15 bases in the Pacific area. In the Philippine Islands,
16 she was making many preparations for the purpose of
17 initiating war from August on, such as the construction
18 of airdromes, the sending of more troops, the
19 sudden despatch of submarines, the importing of many
20 planes, large quantities of arms, ammunition, and
21 equipment, the installation of anti-aircraft guns
22 all along the seacoast, mine laying in Manila Bay,
23 and so on. Moreover, in the same manner, that the
24 U.S. steamers on the Pacific line bound for the Orient
25 had been armed, the U.S.A. was going to propose to

1 Britain the dual use of the port of Singapore and
2 to demand recognition from the Dutch-Indies and Aus-
3 tralia for the use of military bases. She also in-
4 tended, as concerns China, to prevent the Burma Route,
5 the sole line of transportation for supporting Chiang,
6 from breaking down and declared that she would in-
7 sure land transportation by sending her air forces to
8 patrol.

9 "The British Governor-General of Malaya had
10 declared a state of emergency and had suddenly or-
11 ganized the East-Asia Fleet, appointing Admiral Thomas
12 Phillips its Commander-in-Chief. He received rein-
13 forcements of artillerymen and engineers from Britain
14 proper; more warships were despatched from the Indian
15 Ocean and from South Africa. By assembling tens of
16 thousands of soldiers on the frontier of Siam and
17 Malaya under the pretext of defending Malaya, he
18 showed that the time was approaching when Britain
19 would invade Siam. British air forces were also re-
20 inforced with the help of America. There were several
21 military connections between Britain and the Chung-
22 King Government in the Burma area, and the actual
23 state of affairs was that the British, American
24 and Chinese military preparations against
25 Japan were proceeding day by day. The A. B.

1
2 C.D. federation had already added Australia to its
3 membership and Soviet Russia seemed ready to join
4 at any time. Keeping close political, military and
5 economic connections with one another, they were try-
6 ing to check Japan's development to the South, and it
7 was recognized that the blockade was being strenghen-
8 ed day by day, in preparation for the beginning of a
9 war.

10 "These conditions showed the impending
11 pressure against Japan and obviously involved an im-
12 mediate threat for Japan of endangering the vital in-
13 terests of her national existence. Therefore, if
14 the right of self-preservation can be recognized to
15 exist in the present international relations, we may
16 consider that it may be argued that we could disre-
17 gard the prescription of Hague Treaty No. III as it
18 was a case when the right of self-preservation in the
19 narrow sense was active, which right is superior to
20 the rights of other countries. Furthermore, it is
21 possible to argue that it was the case when the right
22 of self-defense could be active, because the block-
23 ade against our country which was carried out with
24 the realization that war would begin and which was
25 pursued with inimical intent might be regarded as a

1 sort of attack or a threat of an approaching attack,
2 attempting to decide Japan's fate economically and
3 militarily.

4 "IX.

5 "In conclusion, though there can be various
6 considerations concerning the violation or non-vio-
7 lation of Hague Treaty No. III, which refers to the
8 outbreak of war (See IV-VI above), in the last analy-
9 sis we can explain not being responsible for the vio-
10 lation of the treaty only by explaining that Hague
11 Treaty No. III is basically an impossible treaty (See
12 VI above), as well as by claiming the rights of self-
13 defense and of self-preservation.

14 "The situation which I mentioned in Chapter
15 VIII can be called a case when the right of self-pre-
16 servation (assuming that it is recognized) was active,
17 and that there is room to claim it was a case when
18 the right of self-defense was in force. In perusing
19 the Imperial edict promulgated at this time, we are
20 advised that 'there is no other alternative for the
21 Empire except to spring up and crush all obstacles for
22 the sake of its self-preservation and self-defense'.
23 This recognizes the coexistence of the rights of self-
24 preservation and of self-defense. We feel that with
25 that mature reason the propriety of our explanation

1 for our disregard of Hague Treaty No. III is self-
2 evident."
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1 MR. LOGAN: If the Tribunal please, it has
2 just been called to my attention that in this document
3 itself, this particular article, there is a preface
4 on a page immediately preceding page one of this
5 article, this excerpt in which the names of the authors
6 of this particular treatise are set forth. They are
7 Mr. TACHI and Mr. KASHIMA. I am also advised that
8 Mr. TACHI is dead. We believe, that in view of the
9 statement made by Mr. HIYASHI in the certificate, that
10 we would like to have Mr. KASHIMA produced for cross-
11 examination.

12 THE PRESIDENT: What does he say in the
13 certificate that warrants the calling of him? He merely
14 says that it is a document in the Foreign Office. He
15 does not say how far it was acted upon.

16 MR. LOGAN: Yes, up above there, your Honor,
17 he says that these --

18 THE PRESIDENT: He says, "prepared by a
19 committee in cooperation with the Foreign Ministry." Do
20 you suggest there was really no cooperation or do you
21 want to discover the extent of it?

22 MR. LOGAN: I am making no suggestion, your
23 Honor. I am endeavoring to find out if that is a fact.
24 There are two ways of doing it, either calling Mr.
25 HIYASHI or calling the author of the article. We should

1 be permitted to examine either one or the other of
2 those men.

3 THE PRESIDENT: I will discuss it with my
4 colleagues.

5 Brigadier Nolan.

6 BRIGADIER NOLAN: I now offer in evidence
7 IPS document No. 4076-A, a report by Dr. Ott to Berlin
8 containing an analysis of speeches in the Diet at
9 the end of January 1942 by the accused TOJO, TOGO and
10 SUZUKI.

11 THE PRESIDENT: Admitted on the usual terms.

12 CLERK OF THE COURT: Prosecution's document
13 No. 4076-A will receive exhibit No. 1271.

14 (Whereupon, the document above
15 referred to was marked prosecution's exhibit
16 No. 1271 and received in evidence.)

17 BRIGADIER NOLAN: I read from 1271:

18 "Telegram (Secret Cipher Process)

19 "Tokyo, 29 January 1942 0700 hours

20 "No. 245 of 27 January

21 "Secret!

22 "Discussions in the Diet this past week have
23 brought forth several important declarations by leading
24 Japanese statesmen, particularly the Prime Minister and
25 Foreign Minister, concerning aims of Japanese policy

1 and the execution of the war, the text of which is
2 known there. The declarations are especially note-
3 worthy because of their systematic character and the
4 time at which they were given, namely shortly before
5 the attack on the fortress of Singapore, after the
6 successful start of the attack on Burma in the direction
7 of Rangoon, the beginning of the operations against
8 the Netherlands Indies, the progressive conquest of
9 the Philippines and the first action against the outer
10 defensive ring of Australia, the Bismarck Archipelago,
11 New Guinea, and the Torres Straits. According to
12 confidential information, Prime Minister General TOJO
13 himself desired a systematic determination of Japanese
14 policy and carried it through in the face of opposition.
15 This spontaneous stepping forward shows TOJO to be a
16 politically leading statesman, who is more than a mere
17 exponent of the Army. His aim was clearly to establish
18 Japanese war policy on a line which is equidistant from
19 the limited wishes of circles which earlier hoped for
20 an understanding with the Anglo-Saxons and on the other
21 hand from the very extended expansionist tendencies
22 of certain radical groups. From TOJO and TOGO's
23 statements the bases of the future building up of
24 Greater Asia under Japanese leadership are firstly
25 brought out, and secondly the government's program for

1 future policy and waging of the war.

2 "I) Building up of East Asia.

3 "1) Japan, Manchukuo, and Nanking-China
4 shall form the inner core of the new organization.
5 Thailand and Indo-China, who cooperate with Japan out
6 of their own free will, will be included. The other
7 areas of the new great sphere shall crystallize under
8 various forms of government around this core. The
9 active support of allied Thailand was thought to be
10 especially hearty by the Prime Minister and Foreign
11 Minister, though her claims for a revision were not
12 mentioned.

13 "2.) The remaining countries of greater
14 East Asia shall fall into three categories:

15 "a) Previous bulwarks of British imperialism
16 which served to suppress and rule East Asia, namely
17 Hong Kong and the Malay Peninsula.

18 This area must be transformed into a bulwark for the
19 protection of Greater East Asia and must therefore
20 be placed under the immediate control of Japan. This
21 principle found a practical application in General
22 ISOGAI'S appointment as Governor General of Hongkong,
23 as reported from another quarter.

24 "b) Areas, whose independence shall be
25 preserved if they loyally collaborate with Japan:

1 The Philippines and Burma. According to what the
2 Military Attache confidentially learned from the Army,
3 their independence shall be formed according to Manchukuo's
4 pattern.

5 "c) Areas which are to be conquered by force
6 of arms if they persist in resisting Japan: Nether-
7 lands Indies, Australia, and Chungking China.

8 "TOJO and TOGO's statements revealed that the
9 original hope of the Netherland Indies' yielding
10 without a fight is no more, and military action is
11 considered essential. Both speeches contained a forcible
12 appeal for Chungking's ear to turn away from the Anglo-
13 Saxons and / come to an/ understanding with Japan. They
14 were still especially underlined by the reported declara-
15 tion of the Prime Minister before the Budget Commission
16 on 23 January.

17 "3) General principles for the future
18 organization of Greater East Asia.

19 "Concerning this, the speeches of TOJO and
20 TOGO and the declarations of TOJO and General SUZUKI,
21 President of the Planning Board, before the Budget
22 Commission on 23 January, contain a few interesting
23 points. The program is emphatically moderate. New
24 areas are not to be exploited after the defeat of Anglo-
25 Saxon mastery. Instead of that economic collaboration,

1 no war of races, tolerance of religious freedom, no
2 economic exclusion, but on the other hand guidance and
3 regulation of production, and if necessary restriction
4 of individual branches of production (Sugar, also
5 rubber were named in a confidential conversation) in
6 accordance with the needs of the Greater Sphere Economy,
7 managed by Japan. The aim of the present measures is
8 the securing of raw materials which are necessary for
9 waging war and the founding of the later autocratic
10 Greater Sphere Order. Present program:

11 "a) Acquisition of important sources of raw
12 materials.

13 "b) Prevention of the flow of raw materials
14 from the South Sea areas to the enemy powers.

15 "c) Securing the self-sufficiency of the Army
16 in the areas of operations.

17 "d) Cooperation with Japan by existing
18 enterprises in the occupied areas."
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1 "II. Future policy and warfare.

2 "The Prime Minister and Foreign Minister
3 forcibly emphasized the indivisibility of the powers
4 of the Tripartite Pact and the inner close collabora-
5 tion of Japan with Germany, Italy, and her other
6 European friends.

7 "A push in the southerly direction: Nether-
8 lands Indies and Australia was set as the military
9 goal. According to confidential military information,
10 in Australia, Port Darwin is to be conquered first.
11 Japanese war leadership can be content in Australia
12 at first with the possession of this base. This
13 concentration of power in a southerly direction explains
14 why India was not mentioned. In connection with
15 India, great restraint can be evidenced here. Adminis-
16 tration leaders and the Army maintain the standpoint
17 that Japan cannot proceed against Australia and India
18 at the same time, but must pause after the conquest
19 of Singapore and Burma since the push toward the
20 South is more important and of greater use. According
21 to confidential information from the director of the
22 European division of the Foreign Ministry, the Indian
23 Congress is opposed to Japan. Indian nationalism,
24 even in case of a successful revolution, would not
25 be able to establish an independent, orderly state."

1 "The control of such a huge area with 400 million
2 inhabitants would hardly be possible for Japan along
3 with her other numerous difficult tasks. Under these
4 circumstances, the danger exists that India will fall
5 prey to Bolshevism.

6 "Concerning Soviet Russia, the Foreign
7 Minister's speech emphasized that relations were
8 unchanged and were as previously based upon the Neutra-
9 lity Pact. In the Budget Commission, TOGO reported
10 that the annual renewal of the Japanese-Russian
11 Fishery Treaty is at hand.

12 "According to strictly confidential informa-
13 tion, however, military preparations in Manchuria
14 against Russia are in operation. Influential circles
15 defend the viewpoint here that Japan must turn on
16 Russia after the conquest of Port Darwin and must seize
17 Vladivostok, the coastal province, and North Sakhalin,
18 in order to finally secure herself in the North also.

19 "I reported elsewhere about the Japanese
20 standpoint concerning South America and the Rio
21 conference."

22 I now offer in evidence IPS document
23 No. 4076-B. 17th of May, 1942.

24 THE PRESIDENT: Mr. Levin.

25 MR. LEVIN: Mr. President, I object to the

1 introduction of this document on the ground that
2 it is incompetent, irrelevant, and immaterial, and
3 primarily incompetent. It is a statement for the
4 purpose of obtaining decorations on the part of the
5 Germans, and for that purpose they recommend certain
6 decorations to be given various high Japanese govern-
7 mental officials. There is, therefore, contained in
8 there, conclusions which are not borne out by any
9 evidence and not borne out by the facts.

10 As a matter of fact, in connection with the
11 recommendation for a medal to General SUZUKI, it is
12 indicated in the statement itself that his attitude
13 toward Germany had always been moderate; but, never-
14 theless, they recommended this medal for him for the
15 purpose of accomplishing the result desired by them.
16 It is a statement of a conclusion made for the accom-
17 plishment of a special purpose, and it seems to us,
18 under those circumstances, that this is highly
19 incompetent.

20 THE PRESIDENT: Brigadier Quilliam, would
21 you like to say something -- Brigadier Nolan?

22 BRIGADIER NOLAN: I do not know what is
23 meant by saying, Mr. President, that it contains
24 conclusions.

25 THE PRESIDENT: They are objectionable when

1 they come from prosecution's witnesses. This is a
2 document from enemy sources.

3 BRIGADIER NOLAN: Precisely. I submit,
4 Mr. President, that it is clearly admissible, and I
5 offer it in evidence.

6 THE PRESIDENT: It is really an estimate of
7 the war services of certain Japanese generals, is it
8 not, and officials?

9 BRIGADIER NOLAN: At this stage--

10 THE PRESIDENT: Is it some evidence of the
11 cooperation given by the Japanese to the Germans in
12 the pursuit of an aggressive war?

13 BRIGADIER NOLAN: May I put it this way,
14 Mr. President: Japan at this time of which we are
15 speaking, having entered the war as an ally of
16 Germany, the German Embassy in Tokyo thought that it
17 was time to recommend for decorations some of those
18 Japanese who, in their opinion, had contributed to
19 this result.

20
21 THE PRESIDENT: Can you say there is evidence
22 that the conspiracy extended to German ministers and
23 officials, more particularly Ribbentrop and Hitler?
24 We have evidence that pressure was brought to bear
25 on the Japanese to declare war against Britain, by
Ribbentrop, more particularly.

1 BRIGADIER NOLAN: I think, Mr. President,
2 I submit that the evidence given in the phase which
3 dealt with the German relations made it abundantly
4 clear that they were all in this conspiracy.

5 THE PRESIDENT: Mr. Cunningham.

6 MR. CUNNINGHAM: Mr. President, I object to
7 the statement of counsel and submit that it is not
8 substantiated by the record, and it is merely argu-
9 ment on the part of counsel and has no place in the
10 record at this time.

11 THE PRESIDENT: What else could it be but
12 arguments? This is a point of law.

13 Mr. Howard.

14 MR. HOWARD: Mr. President, I had not planned
15 to mention it at this time, but since the question
16 has been raised, General KIMURA is mentioned in here .
17 and I have not been able to find anything about it
18 that is correct yet. I have not checked every fact
19 that he states here, but for one thing, he says he
20 was born in Tokyo Prefecture, and that in his position
21 of Chief of the General Staff of the Kwantung Army,
22 October 1939 to October 1940 -- apparently he selected
23 names at random and interposed facts just out of a
24 clear sky.
25

MR. LOGAN: If the Tribunal please, on a

1 point of law involved here, I fail to see how, at
2 this time, any conspiracy has been shown between these
3 accused and the German Government or the one who
4 recommended these decorations. The mere fact that
5 one government wishes to extend decorations to certain
6 individuals certainly does not establish any conspiracy,
7 nor is it an element thereof.

8 THE PRESIDENT: It could be an acknowledgment
9 of services given by co-conspirators. We have decided
10 to admit the document.

11 CLERK OF THE COURT: Prosecution's document
12 No. 4076-B will receive exhibit No. 1272.

13 (Whereupon, the document above referred
14 to was marked prosecution's exhibit No. 1272,
15 and was received in evidence.)

16 THE PRESIDENT: We will adjourn now until
17 half past nine tomorrow morning.

18 (Whereupon, at 1605, an adjourn-
19 ment was taken until Wednesday, 27 November
20 1946, at 0930.)
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